
ADVERSE POSSESSION

Adverse possession is a method of acquiring title to real property through possession of the property over a long period of time. The primary purposes of the doctrine of adverse possession are to encourage the fullest and most productive use of privately owned property, to reject stale claims, and to quiet titles.

REQUIREMENTS

Actual, Open and Notorious Possession. The claimant's possession must be sufficient to put the true owner on notice of the claimant's use and occupancy of the land. The possession must be of the character that a true owner would assert, such that any reasonable person would assume that the claimant was the owner. What acts are sufficient to satisfy this requirement depends upon the character, nature, and location of the land. The most common claims of adverse possession in modern times involve mislocated fences or other improvements. However, simply maintaining the landscaping has been held to be sufficient evidence of actual, open and notorious possession.

Hostility. This element does not require any malice, spite or ill-will toward the true owner, but rather that the claimant treat the land as his or her own as against the world. The nature of the possession is determined solely upon the basis of the manner in which the claimant treats the property, and not on the subjective belief or intent of the claimant. In other words, it is no longer required that the claimant possess the property under a good faith belief that the land is his or her own. *Chaplin v. Sanders*, 100 Wn.2d 853 (1984). However, permission given by the true owner negates the element of hostility and precludes a claim of adverse possession, no matter how long the possession continues.

Continuous and Uninterrupted Possession. Generally, the claimant must be in possession of the property for ten (10) successive years without a significant break in continuity. What constitutes continuous use depends upon the nature of the property. For example, recreational property might be used only during certain times of the year, yet, if the claimant's use of the property is that which a true owner would make of the property, then the use is continuous. The required period of adverse possession is reduced from ten years to seven (7) years, if the claimant has color of title and has paid taxes on the property. Color of title exists when a person appears to have title of record, but the title is defective in some respect. The most common example arises in the case of overlapping, erroneous legal descriptions, where adjoining landowners both have color of title and have paid taxes on the strip of land within the overlapping legal descriptions, but where only one of the owners has used the strip. The ten (or seven) year period is not required to be satisfied during one person's term of ownership, but rather can be tacked together in successive ownerships. Thus, the adverse possession period may be satisfied through several different ownerships of the property, although proof problems become more difficult.

Exclusive Possession. The claimant must use and occupy the property to the exclusion of the true owner. If both the claimant and the true owner have possessed the property, then the use is not exclusive.

PUBLIC LANDS

Land owned by federal, state, or local government, or an agency thereof, is not subject to adverse possession.

This article contains general information only, and should not be used or relied upon as a substitute for competent legal advice in specific situations.

PERFECTING TITLE

Once all of the requirements for adverse possession have been satisfied, the claimant acquires title to the property, regardless of whether either the true owner or the claimant were aware that the property was being adversely possessed. However, in order for the claimant's title to be marketable and insurable, the claimant must obtain a quiet title decree through court action or a quit claim deed from the owner of record. Generally, a title insurance company will not be willing to accept the claimant's assurances that all of the requirements for adverse possession have been met.

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